

***State v. Hon. Gates, No. CR-17-0326-PR (February 16, 2018)***

Altamirano was charged with first degree murder and the State sought the death penalty. The trial court ordered that he undergo an intellectual disability prescreening evaluation pursuant to § 13-753. He objected to the evaluation, but stated he did not waive his right to raise these issues at a later time and that his refusal to participate in the evaluation should not be deemed or construed as a waiver of that right. Two years later and 4 months before trial, he withdrew his objection and asked for an evaluation; the trial court granted his request. The State filed a special action, and the COA declined to accept jurisdiction. ASC granted review, vacated, and remanded.

- Where a capital defendant objects to and thereby waives the pretrial intellectual disability evaluation required under § 13-753(B), he cannot later void his waiver by withdrawing his objection; however, a defendant's waiver does not deprive the trial court of its discretionary authority to order such an evaluation if the defendant later requests or consents to one.

A.R.S. § 13-753(B) provides that the trial court must order a pretrial intellectual disability evaluation in every capital case unless the defendant objects; if an objection is lodged, the defendant waives the right to a pretrial evaluation. ASC disagreed with Altamirano that this statute permits him to void any waiver by withdrawing his objection, and concluded that the statute prohibits Altamirano from reinstating his right to a pretrial evaluation by withdrawing his objection. ASC noted this conclusion is not altered by Altamirano's qualified objection in which he tried to avoid waiver. However, ASC held that the waiver provision does not prohibit the court from ordering an evaluation despite a defendant's earlier waiver. But the court's authority to order an examination is not unlimited; because a defendant has the right to object to an evaluation, the court may not order an examination unless the defendant either requests or consents to the examination. Additionally, in making a post-waiver determination, the court must consider whether ordering an evaluation would prejudice the state or the victims. Such prejudice includes, but is not limited to, whether the evaluation would require the court to continue an existing trial date. Moreover, if the court, after considering all the above factors, decides to deny the defendant's request, the defendant may still offer evidence of his intellectual disability status during the penalty phase. ASC remanded the case back to the trial court for a further determination under the parameters of its decision.

<http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2018/CR170326PR.pdf>